

INSURANCE DIVISION[191]

Adopted and Filed

Rule making related to surplus lines insurers

The Insurance Division hereby amends Chapter 21, “Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 515I.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 515I.

Purpose and Summary

These amendments add a late fee of \$500 for surplus lines insurers that (1) fail to file renewal applications by March 1 of each year following the year of registration or fail to submit requested information or (2) fail to file a financial statement as instructed on the Division’s website.

The Division has been unable to secure reasonable compliance with the renewal requirements and timely submission of financial statements for eligible surplus lines insurers. This increasing noncompliance has taken two forms: more filers filing after the deadline and more filers requiring additional outreach from the Division. In 2020, 13 surplus lines insurers failed to timely file their renewal.

Under the existing Chapter 21, noncompliance requires automatic termination of the insurer’s status as an eligible surplus lines insurer. In the event of noncompliance, the Division may also pursue a formal administrative proceeding. The amended subrules consistently apply the same penalty to surplus lines insurers as is applied to other insurers that fail to timely file an application for renewal or fail to timely file financial statements.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 25, 2021, as **ARC 5874C**. A public hearing was held on September 15, 2021, at 9 a.m.

Two comments were received at the hearing. One comment was in support of the rule making. A second comment questioned the authority of the Division to impose a late fee on risk retention groups due to the existence of the federal Liability Risk Retention Act. No other public comments were received.

After reviewing the comments submitted, the Division has decided to not adopt changes, proposed in Item 3 of the Notice, related to risk retention groups.

Adoption of Rule Making

This rule making was adopted by Douglas Ommen, Iowa Insurance Commissioner, on October 5, 2021.

Fiscal Impact

The fiscal impact cannot be calculated at this time. The goal of imposing a late fee is to encourage compliance with the filing deadline. If the addition of the late fee has its intended effect, the fiscal impact will be zero.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 191—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 8, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrules 21.5(2) to 21.5(4) as follows:

21.5(2) *Procedures for renewal of an insurer as an eligible surplus lines insurer.* An eligible surplus lines insurer that was approved by the division as an eligible surplus lines insurer, except for an alien insurer under Iowa Code section ~~515I.2(7)~~ “b,” 515I.2(8) “b,” must by March 1 of each year following the year of approval:

a. to c. No change.

21.5(3) *Periodic reporting.* An eligible surplus lines insurer, except for an alien insurer under Iowa Code section ~~515I.2(7)~~ “b,” 515I.2(8) “b,” must submit annual and quarterly financial statements to the division as instructed on the division's website.

21.5(4) *Failure to comply with renewal procedures.* ~~Failure of an eligible surplus lines insurer to timely submit the renewal materials required by subrule 21.5(2) will result in the automatic termination of the insurer's status as an eligible surplus lines insurer. An eligible surplus lines insurer that fails to timely file an application for renewal as an eligible surplus lines insurer or fails to provide requested information shall pay a late fee of \$500.~~

ITEM 2. Adopt the following new subrules 21.5(5) to 21.5(7):

21.5(5) *Failure to timely file financial statements.* An eligible surplus lines insurer that fails to file a financial statement, as instructed on the division's website, shall pay a late fee of \$500. The commissioner may give notice to an insurer that fails to timely file that the insurer is in violation of this subrule. If the insurer fails to file the required financial statements within ten days of the date of the notice, the insurer shall pay an additional late fee of \$100 for each day the failure continues.

21.5(6) *Failure to comply with this rule.* An eligible surplus lines insurer's authority to transact new business in this state shall immediately cease until the insurer has fully complied with this rule, including paying all applicable late fees.

21.5(7) *Suspension.* The commissioner may order the suspension of an eligible surplus lines insurer's authority to transact the business of insurance within the state, after notice and hearing

pursuant to Iowa Code chapter 17A, if the eligible surplus lines insurer fails to fully comply with this rule within 90 days, including paying all applicable late fees.

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